

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ERG AEROSPACE CORPORATION,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

UNITED STATES OF AMERICA,

Counterclaim-Plaintiff,

v.

ERG AEROSPACE CORPORATION,
ENERGY RESEARCH & GENERATION,
INC., individually, and d/b/a ERG
MATERIALS & AEROSPACE CORP.,

Counterclaim-Defendants.

CASE NO. C-13-2973 VC

~~[proposed]~~

STIPULATED JUDGMENT AND INJUNCTION

1. The United States filed a counterclaim alleging that ERG Aerospace is the successor-in-interest of Energy Research & Generation, Inc.; ERG Aerospace is the transferee of Energy Research & Generation, Inc.; Energy Research & Generation, Inc.'s tax assessment should be reduced to a judgment;

1 and the court should enjoin Energy Research & Generation, Inc. and ERG Aerospace from interfering
2 with the Internal Revenue Laws.

3 2. IT IS ORDERED THAT Plaintiff ERG Aerospace's complaint filed on June 27, 2013, is
4 DISMISSED, with prejudice.

5 3. With respect to Count II of the United States' Counterclaim, IT IS ORDERED THAT
6 ERG Aerospace is the Successor-in-Interest of Energy Research & Generation, Inc., and is responsible
7 for paying the \$24,086,135.69 judgment entered in this case, with interest;

8 4. With respect to Count III of the United States' Counterclaim, IT IS ORDERED THAT
9 ERG Aerospace is the transferee of Energy Research & Generation, Inc. and is responsible for paying
10 the \$24,086,135.69 judgment entered in this case, with interest;

11 5. With respect to Count I of the United States' Counterclaim, Counterclaim Defendants,
12 without admitting any of the allegations in the complaint except as to jurisdiction, waives the entry of
13 findings of fact and conclusions of law under Fed. R. Civ. P. 52, and consents to the entry of this
14 Stipulated Judgment of Permanent Injunction ("Stipulated Judgment") under Fed. R. Civ. P. 65 and 26
15 U.S.C. § 7402;

16 Accordingly, in light of the foregoing, the Court hereby ORDERS that:

17 A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1340, 1345 and 26
18 U.S.C. § 7402;

19 B. Counterclaim Defendants have consented to the entry of this Stipulated Judgment and
20 agree to be bound by its terms;

21 C. Pursuant to 26 U.S.C. § 7402, commencing on the date this order is entered,
22 Counterclaim Defendants and their representatives, agents, employees, attorneys, and anyone in active
23 concert or participation with them, are enjoined from:

24 i. Engaging in conduct that violates 26 U.S.C. §§ 3101, 3102, 3111, 3402, 6011(a),
25 and 6041;

26 ii. Failing to file a timely federal income tax return for the tax years commencing
27 in 2015, and thereafter, with regard to any extension approved by the IRS;
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- iii. Changing names without prior notification sent to the IRS Revenue Officer who is assigned to collect the tax debt owed by Energy Research & Generation, Inc.;
- iv. Applying for a Tax Identification Number related to any business connected to Counterclaim Defendants;
- v. Employing, in any pay, paid or unpaid, Burton O. Benson in a managerial or position of fiduciary duty, including the authority to sign bank accounts, hire employees, enter contracts on behalf of Counterclaim Defendants, or to prepare and sign federal income, employment or unemployment tax returns;
- vi. Permitting Burton O. Benson to serve as an officer or as a member of the board of directors for Counterclaim Defendants;
- vii. Paying any non-business expense of any current or former officer or employee of Counterclaim Defendants;
- viii. Providing false or misleading financial information to the IRS;
- ix. Moving the location of the business without first notifying the IRS Revenue Officer assigned to collect Energy Research & Generation, Inc.'s unpaid tax debt.

D. Pursuant to 26 U.S.C. § 7402, commencing on the date this order is entered, Counterclaim Defendants and their representatives, agents, employees, attorneys, and anyone in active concert or participation with them, shall:

- i. File all unfiled tax returns from 1999- to the present, related to the entity Energy Research & Generation, Inc.;
- ii. File all unfiled tax returns in the name of Energy Research & Generation, Inc. for those years Counterclaim Defendants filed income tax returns using the name ERG Aerospace;
- iii. File all unfiled employment and unemployment tax returns;
- iv. Counterclaim Defendants shall file all unfiled tax returns referenced in this stipulation no later than 24-months from the date the stipulation is filed;

v. Timely deposit withheld FICA taxes, as well as Counterclaim Defendants' FICA taxes, in an appropriate federal depository bank in accordance with the federal deposit regulations;

vi. Deposit withheld FUTA taxes in an appropriate federal depository bank in accordance with the federal deposit regulations;

vii. Deposit withholdings from Counterclaim Defendants' employees' wages in an appropriate federal depository bank in accordance with the federal deposit regulations;

viii. Timely pay all required outstanding liabilities due on each return required to be filed herein with regard to any installment agreement with the IRS;

ix. Notify the Internal Revenue Service of any new company or entity that Counterclaim Defendants acquire, or manage in the next ten years; and

x. Control, use, or have an interest in no more than four bank accounts, and shall deliver to the IRS statements from the accounts prior to March 31, June 30, September 30, and December 31, annually.

E. The United States shall be entitled to conduct discovery to monitor Paying any non-business expense for any officer or employee of Counterclaim Defendants' compliance with the terms of this Stipulated Judgment; and

F. This Court shall retain jurisdiction over this matter and Defendant for the purpose of enforcing this Stipulated Judgment.

THUS DONE AND SIGNED on this 22nd day of July, 2015 at San Francisco, California.

IT IS SO ORDERED.

DATED: July 22, 2015



THE HONORABLE VINCENT CHHABRIA
United States District Judge